

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA

Case No. 3:10-CR-00506-KI

v.

HOSSEIN LAHIJI,
and
NAJMEH VAHID,
aka Najmeh Lahiji,

Defendants.

~~PROPOSED~~ UNCLASSIFIED ORDER APPROVING IN PART AND DENYING IN
PART THE DELETION OF CLASSIFIED INFORMATION FROM DISCOVERY
PURSUANT TO SECTION 4 OF THE CLASSIFIED INFORMATION PROCEDURES
ACT AND RULE 16(d)(1) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE,
DENYING RECONSIDERATION, AND APPROVING SUBSTITUTION

This matter initially came before the Court on the United States' Classified *In Camera*, *Ex Parte* Motion for an Order Pursuant to Section 4 of the Classified Information Procedures Act (CIPA) and Rule 16(d)(1) of the Federal Rules of Criminal Procedure. On August 28, 2012, the United States, by and through its attorneys of record, moved *ex parte*, *in camera* and under seal, pursuant to Section 4 of CIPA, 18 U.S.C. app. 3, and Fed. R. Crim. P. 16(d)(1) for authorization to withhold disclosure of certain classified materials from discovery (ECF No. 125). The Court found that the government's Motion was properly filed *in camera*, *ex parte* for this Court's review, pursuant to CIPA Section 4 and Rule 16(d)(1). The submission contained classified information that required protection against unauthorized disclosure for reasons of national security such that its disclosure to the defense, or the public, reasonably could be expected to

cause serious damage to national security. Having reviewed the government's Motion and attached exhibits including a classified Declaration, the relevant law, and being fully advised in the premises, on October 3, 2012, the Court conducted an *ex parte* and *in camera* hearing (ECF No. 138) at which it concluded that good cause existed for granting the Motion in part, and denying the Motion in part. The Court indicated that it would entertain a proposed substitution pursuant to CIPA Section 4 for the materials as to which the Court denied the Motion for deletion.

Thereafter, on or about January 10, 2013, the United States filed its Classified *in Camera*, *ex Parte* Motion for an Order Reconsidering Previous Order Pursuant to Section 4 of the Classified Information Procedures Act and Rule 16(d)(1) of the Federal Rules of Criminal Procedure or, in the Alternative, Approving Proposed Substitution. After *ex parte*, *in camera* inspection and consideration of the government's Motion and attachments, the Court concluded that:

1. Defendants are charged in a two-count Indictment with Count 1, Conspiracy to Defraud the United States in violation of 18 U.S.C. § 371 and Count 2, Conspiracy to Commit Money Laundering in violation of 18 U.S.C. § 1956(h).
2. After reviewing the original Motion (ECF No. 125) and the Motion for reconsideration, the Court found that certain of the materials sought to be deleted from discovery were not relevant and helpful to the defense, and were therefore not subject to discovery under Fed. R. Crim. P. Rule 16(a)(1)(B)(i) and *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny.

Even if the materials were relevant and helpful to the defense, their value to the defense was outweighed by the serious harm to national security that would result from the disclosure of the information as articulated in the classified Declaration appended to the government's original Motion. The Court further concluded that certain of the information sought to be deleted from discovery was relevant and helpful to the defense, and accordingly denied both the government's original Motion (ECF No. 125) and Motion for reconsideration filed on or about January 10, 2013. However, the Court found that the United States' proposed substitution would provide defendants with substantially the same ability to make their defense as would disclosure of the original classified materials as to which the Court had denied the government's Motion for deletion from discovery.

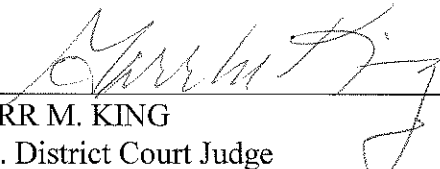
Accordingly, pursuant to Section 4 of CIPA, and Fed. R. Crim. P. 16(d)(1), IT IS HEREBY ORDERED that:

1. The Motion of the United States for deletion from discovery (ECF No. 125) is approved in part and denied in part. The Motion of the United States for reconsideration filed on or about January 10, 2013 is denied.
2. The United States need not disclose to the defense the classified materials described in the submissions as to which the Court has approved deletion from discovery pursuant to CIPA Section 4 and Fed. R. Crim. P. 16(d)(1).
3. The United States is authorized to substitute the proposed alternate summary of the materials as to which the Motions for deletion and for reconsideration were denied. Such

information shall be provided to the defense in substantially the form proposed in the government's submission, and the government need not disclose to the defense the original, classified materials.


4. The Motions and exhibits of the United States and the classified order are hereby SEALED and shall be retained in accordance with established security procedures until further order of the Court.

Dated this 5th day of Feb 2013.


GARR M. KING
U.S. District Court Judge

Presented by:

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United States Attorney
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[Proposed] Unclassified Order Approving in Part and Denying in Part the Deletion of Classified Information from Discovery Pursuant to Section 4 of the Classified Information Procedures Act and Rule 16(d)(1) of the Federal Rules of Criminal Procedure, Denying Reconsideration, and Approving Substitution